

section 3507 is made to an individual by an employer during any calendar year, then the total amount of these advance payments to the individual in that calendar year is treated as an additional amount of tax imposed (by chapter 1 of the Code) upon the individual on the tax return for the individual's last taxable year beginning in that calendar year.

(2) *Reconciliation of payments advanced and credit allowed.* Any additional amount of tax under paragraph (e)(1) of this section is not treated as a tax imposed by chapter 1 of the Code for purposes of determining the amount of any credit (other than the earned income credit) allowable under subpart A, part IV, subchapter A, chapter 1 of the Code.

[T.D. 7683, 45 FR 16175, Mar. 13, 1980. Redesignated by T.D. 8448, 57 FR 54923, Nov. 23, 1992]

§ 1.32-3T Eligibility requirements (Temporary).

(a) *In general.* A taxpayer who has been denied the earned income credit (EIC), in whole or in part, as a result of the deficiency procedures under subchapter B of chapter 63 (deficiency procedures) is ineligible to file a return claiming the EIC subsequent to the denial until the taxpayer demonstrates eligibility for the EIC in accordance with paragraph (c) of this section. If a taxpayer demonstrates eligibility for a taxable year in accordance with paragraph (c) of this section, the taxpayer need not comply with those requirements for any subsequent taxable year unless the Service again denies the EIC as a result of the deficiency procedures.

(b) *Denial of the EIC as a result of the deficiency procedures.* For purposes of this section, denial of the EIC as a result of the deficiency procedures occurs when a tax on account of the EIC is assessed as a deficiency (other than as a mathematical or clerical error under section 6213(b)(1)).

(c) *Demonstration of eligibility.* In the case of a taxpayer to whom paragraph (a) of this section applies, and except as otherwise provided by the Commissioner, no claim for the EIC filed subsequent to the denial is allowed unless the taxpayer properly completes Form 8862, *Information To Claim Earned Income Credit After Disallowance*, dem-

onstrating eligibility for the EIC, and otherwise is eligible for the EIC. If any item of information on Form 8862 is incorrect or inconsistent with any item on the return, the taxpayer will be treated as not demonstrating eligibility for the EIC. The taxpayer must attach Form 8862 to the taxpayer's first income tax return on which the taxpayer claims the EIC after the EIC has been denied as a result of the deficiency procedures.

(d) *Failure to demonstrate eligibility.* If a taxpayer to whom paragraph (a) of this section applies fails to satisfy the requirements of paragraph (c) of this section with respect to a particular taxable year, the IRS can deny the EIC as a mathematical or clerical error under section 6213(g)(2)(J) [(K)].

(e) *Special rule where one spouse denied EIC.* The eligibility requirements set forth in this section apply to taxpayers filing a joint return where one spouse was denied the EIC for a taxable year prior to marriage and has not established eligibility as either an unmarried or married taxpayer for a subsequent taxable year.

(f) *Effective date.* This section applies to returns claiming the EIC for taxable years beginning after December 31, 1997, where the EIC was denied for a taxable year beginning after December 31, 1996.

[T.D. 8773, 63 FR 34596, June 25, 1998]

§ 1.34-1 Credit against tax and exclusion from gross income in case of dividends received by individuals.

(a) *In general.* (1) Section 34 provides a credit against the income tax of an individual for certain dividends received after July 31, 1954, and on or before December 31, 1964. The credit, subject to the limitations provided in section 34(b), is equal to 4 percent of the dividends received before January 1, 1964, and 2 percent of the dividends received during the calendar year 1964. The credit is allowable with respect to dividends received in any taxable year ending after July 31, 1954, but applies only to dividends received on or before December 31, 1964. The credit applies only to dividends which are received from domestic corporations and which are included in the gross income of the taxpayer. Section 116 provides for the

exclusion from gross income of the first \$100 (\$50 for dividends received in taxable years beginning before January 1, 1964) of certain dividends received by an individual. See § 1.116-1. In determining which dividends are entitled to the credit against income tax provided by section 34, the exclusion from gross income provided in section 116 is applied to the first dividends received in the taxable year. Since the exclusion applies to dividends received at any time during a taxable year ending after July 31, 1954, dividends received before August 1, 1954, may be taken into account in determining the exclusion from gross income under section 116 but do not constitute dividends for which a credit is allowed.

(2) The application of section 34 (without regard to the limitations provided in section 34(b)) may be illustrated by the following example:

Example. A, an individual who makes his return on the basis of the calendar year, receives in the year 1954 the following dividends: \$100 on March 1, \$100 on June 1, \$100 on September 1, and \$100 on December 1. \$50 of the dividends received by A on March 1, 1954, is excluded from gross income under section 116. The balance of the dividends received in 1954, amounting to \$350, is includible in the gross income of A. Subject to the limitation in section 34(b) a credit of \$8 is allowed under section 34 (4 percent of \$200, the amount of the dividends received after July 31, 1954, that is, \$100 received on September 1, 1954, and \$100 received on December 1, 1954).

(b) *Tax credit.* The credit is used to reduce the tax imposed by Subtitle A of the Code, including the alternative tax under section 1201 in the case of capital gains and the self-employment tax under chapter 2 of the Code; however, it may not be used by the taxpayer as a credit against penalties, additions to the tax, or interest on delinquent taxes.

(c) *Joint return of husband and wife.* (1) In the case of a joint return the credit is determined on the basis of the dividends received by both the husband and wife after taking into account the exclusion allowed by section 116. See § 1.116-1. The credit is allowable in the case of a joint return on account of the dividends received by each spouse without regard to whether the spouse would be liable for the tax imposed by Subtitle A if the joint return had not been

filed. However, the limitations on amount of credit in section 34(b) are determined by reference to the tax and the credit under section 33 required to be shown on the joint return and to the combined taxable income of husband and wife. For this purpose, it makes no difference whether the tax, the credit, or the taxable income is attributable to one or the other spouse. If both the husband and wife are entitled to the credit, their combined credit shall not exceed the amount so computed.

(2) The application of subparagraph (1) of this paragraph may be illustrated by the following examples:

Example 1. H and W, husband and wife, make a joint return for the calendar year 1954. The only dividend received by either of them during the year is a dividend received by H on September 1 in the amount of \$400. Subject to the limitations of section 34(b), the credit amounts to \$14 (4 percent of \$350, the dividends included in gross income after allowance of the exclusion of \$50 under section 116).

Example 2. The facts are the same as in example (1) except that W also received a dividend on September 1 of \$30. Since this dividend (being less than the maximum amount allowable as an exclusion under section 116(a)) is excluded from W's gross income, it does not affect the computation of the tax credit and the tax credit is the same as in example (1).

Example 3. H and W, husband and wife, make a joint return for the calendar year 1954. H and W each received a \$400 dividend on September 1, 1954, and these were the only dividends received by them in 1954. Since H and W may each exclude \$50 of the dividends received by them, \$700 of dividend income is included in gross income. Subject to the limitations in section 34(b), the credit against the tax of H and W amounts to \$28 (4 percent of \$700).

(d) *Individuals receiving dividends.* Where two or more persons hold stock as tenants in common, as joint tenants, or as tenants by the entirety, the dividends received with respect to such stock shall be considered as being received by each tenant to the extent that he is entitled under local law to a share of such dividends. Where dividends constitute community property under local law each spouse shall be considered as receiving one-half of such dividends.

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(e) *Time dividends are received.* In cases where it is necessary to determine the time of receipt of dividends, the rules established to determine in which taxable year dividends must be included in gross income apply, including the rules relating to constructive receipt. See section 451 and regulations thereunder.

[T.D. 6500, 25 FR 11402, Nov. 26, 1960, as amended by T.D. 6777, 29 FR 17806, Dec. 16, 1964]

§ 1.34-2 Limitations on amount of credit.

(a) Under section 34(b) the credit may not exceed the lesser of either—

(1) The amount of the tax imposed by chapter 1 of the Code for the taxable year reduced by the foreign tax credit allowable under section 33, or

(2) Whichever of the following is applicable:

(i) In the case of a taxable year ending before January 1, 1955, or beginning after December 31, 1963, 2 percent of the taxable income for such taxable year;

(ii) In the case of a taxable year ending after December 31, 1954, and beginning before January 1, 1964, 4 percent of the taxable income for such taxable year. In the case of a taxpayer who computes his tax under section 3 or who uses the standard deduction provided by section 141, the taxable income for the taxable year is the adjusted gross income for the taxable year reduced by the standard deduction prescribed in section 141 and the deductions for personal exemptions provided in section 151. Where the alternative tax on capital gains is imposed under section 1201(b), the taxable income for such taxable year is the taxable income as defined in section 63, which includes 50 percent of the excess of net long-term capital gain over net short-term capital loss.

(b) The application of the limitations in paragraph (a) of this section may be illustrated by the following example:

Example. Assume the following facts in the case of an individual whose taxable year is the calendar year:

1954

Computation of tax liability without regard to the dividend received credit:

(1) Gross income \$7,500

(2) Deductions 2,900
(3) Taxable income 4,600
(4) Income tax liability 996
(5) Foreign tax credit 16
(6) Income tax liability minus foreign tax credit .. 980

Computation of limitation under section 34(b)(1):

(7) Dividends for which credit is allowable \$2,500
(8) Dividends received credit under section 34(a); (2,500×0.04) 100
(9) Dividends received credit, as limited by section 34(b)(1); (item (6) or item (8) whichever is lesser) 100

Computation of limitation under section 34(b)(2):

(10) Taxable income \$4,600
(11) Dividends received credit under section 34(b)(2); (4,600×0.02) 92

Dividends received credit allowable:

Item (6), item (9), or item (11), whichever is lesser \$92

1955

Computation of tax liability without regard to the dividend received credit:

(12) Gross income \$7,500
(13) Deductions 2,900
(14) Taxable income 4,600
(15) Income tax liability 996
(16) Foreign tax credit 816
(17) Income tax liability minus foreign tax credit 180

Computation of limitation under section 34(b)(1):

(18) Dividends for which credit is allowable \$2,500
(19) Dividends received credit under section 34(a); (2,500×0.04) 100
(20) Dividends received credit as limited by section 34(b)(1); (item (17) or item (19) whichever is lesser) 100

Computation of limitation under section 34(b)(2):

(21) Taxable income \$4,600
(22) Dividends received credit under section 34(b)(2); (4,600×0.04) 184

Dividends received credit allowable:

Item (17), item (19), or item (22), whichever is lesser \$100

[T.D. 6500, 25 FR 11402, Nov. 26, 1960, as amended by T.D. 6777, 29 FR 17807, Dec. 16, 1964]

§ 1.34-3 Dividends to which the credit and exclusion apply.

(a) *General rule.* The credit under section 34 and the exclusion under section 116 apply only to distributions of property defined as dividends by section 316. Thus, the credit and the exclusion are not allowed with respect to patronage dividends paid by either exempt or